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GOVERNMENT NOTICE

FINANCIAL INTELLIGENCE CENTRE

No. 735

18 June 2004

GUIDANCE TO FINANCIAL SERVICES INDUSTRIES REGULATED BY THE FINANCIAL SERVICES BOARD CONCERNING THE MEANING OF THE WORD "TRANSACTION"

The Financial Intelligence Centre has, in terms of its statutory function under section 4(c) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), issued the guidance note in the Schedule.



.....
M Michell

ACTING DIRECTOR: FINANCIAL INTELLIGENCE CENTRE

Date: 11/06/2004

SCHEDULE

Guidance Note 2

Guidance to Financial Services Industries regulated by the Financial Services Board concerning the meaning of the word "Transaction"

Introduction

Money Laundering is criminalised in section 4 of the Prevention of Organised Crime Act, 1998. The money laundering offence can be described as the performing of any act which may result in concealing the nature of the proceeds of crime or of enabling a person to avoid prosecution or in the diminishing of such proceeds.

Apart from criminalising the activities constituting money laundering, South African law also contains a number of control measures aimed at facilitating the detection and investigation of money laundering. These control measures, as contained in the Act, are based on three basic principles of money laundering detection and investigation, i.e. that:

- intermediaries to the financial system must know with whom they are doing business,
- the paper trail of transactions through the financial system must be preserved, and
- possible money laundering transactions must be brought to the attention of investigating authorities.

The control measures introduced by the Act include requirements for institutions to establish and verify the identities of their clients, to keep certain records, to report certain information and to implement measures that will assist them in complying with the Act.

The majority of obligations under the Act apply to "accountable institutions". These are institutions which fall within any one of the categories of institutions listed in Schedule 1 to the Act. This Guidance Note is aimed at those accountable institutions that are referred to in items 4, 5, 8, 11, 12, 15, 17 and 18 of Schedule 1 to the Act.

The Act also established the Financial Intelligence Centre as the agency responsible for the collection, analysis and disclosure of information to assist in the detection, prevention and deterrence of money laundering in South Africa. The Act empowers the Centre to provide guidance in relation to a number of matters.

This Guidance Note provides general guidelines which the relevant accountable institutions may apply in order to interpret the term "transaction" in relation to each institution's obligations to identify and verify the identities of its clients. **It is not the purpose of this Guidance Note to provide a complete definition of the term which could be applied rigidly across all sectors of the financial services industry.** This Guidance Note is not legal advice and is not intended to replace the Act and Money Laundering Control Regulations ("the Regulations") issued under the Act in December 2002.

Meaning of "transaction" in relation to client identification duties

Accountable institutions are prevented by section 21 of the Act from concluding certain transactions unless they have established and verified the identities of their clients.

The term "transaction" is defined in the Act as follows:

"'transaction' means a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution;"

While this definition does not attribute a particular meaning to the term "transaction", it conveys the concept that the term may have different meanings depending on the type of business undertaken by different accountable institutions and would be applied differently among them. **In short, the term must be applied in each instance in accordance with the nature of the business carried on by the accountable institution in question.**

This definition also indicates that the term refers to activities which take place between an accountable institution and a client.

The dictionary meaning of the term "transaction", as taken from the Concise Oxford Dictionary, includes "management of business" and "piece of especially commercial business done". Applying this definition, a transaction can therefore generally be described as an instance of commercial activity between two or more parties.

Transactions are concluded on the basis of agreements between the parties to a transaction. Following the definition of the term "transaction" in the Act, as well as the dictionary meaning of the term, these agreements must be aimed at a piece of business done between an accountable institution and a client, in accordance with the nature of the business carried on by the institution concerned. A basic guideline, which can be inferred from this, is that any instruction or request

by a client to an accountable institution to perform some act to give effect to the business relationship between them can be regarded as a transaction.

Examples of transactions

For the purpose of the obligation to establish and verify clients' identities as referred to in this guidance note, the term "transaction" is not understood to include activities which happen automatically, or which an intermediary will perform automatically, without instructions from the client. These consequences include, for example, periodic contractual payments by clients to institutions and periodic automatic increases in such payments, as well as further business that accountable institutions may do with others in the course of giving effect to the clients' original mandate.

Examples of what might be regarded as "transactions" for the purposes of client identification in respect of the accountable institutions supervised by the Financial Services Board follow below. **This is not an exhaustive list of "transactions" performed by the relevant accountable institutions, but is intended to provide an indication of the types of activities which might be regarded as transactions.**

(a) *Collective Investment Schemes*

- The giving of a mandate to invest in any collective investment scheme;
- Any amendment in the original investment mandate of the client;
- An instruction to transfer or switch the investment to another collective investment scheme;
- The offering of participating interests for repurchase;
- The repayment of participants' interests following the closure of a fund or portfolio.

(b) *Long-Term Insurance*

- The entering into a new long-term insurance policy;
- An amendment or variation of the terms and conditions of a long-term insurance policy, including a change in the beneficiary or policyholder;
- An instruction by the client to the long-term insurer to switch or reinvest the underlying assets of a linked policy with linked investment service providers or investment managers;
- Termination (including the lapsing and surrender), withdrawal, or reinvestment of a long-term insurance policy.

The above activities apply both to the intermediary and service provider.

(c) *Investment Managers*

- The entering into a new investment contract;
- Additional amounts invested in terms of an investment mandate with a client;
- An amendment or variation of the terms and conditions of an investment mandate;
- An instruction by the client to switch or reinvest the investment to other linked investment service providers or investment managers;
- An instruction by the client for a partial withdrawal of investment and the subsequent repayment of the investment in any form;
- Termination or withdrawal of an investment mandate and the subsequent repayment of the investments in any form.

(d) *Linked Investment Service Providers (LISP's)*

- The entering into a new investment contract;
- Additional amounts invested in terms of an investment mandate with a client;
- An amendment or variation of the terms and conditions of an investment mandate;
- An instruction by the client to switch or reinvest the investment to other linked investment service providers or investment managers;
- Termination or withdrawal of an investment mandate and the subsequent repayment of the investments in any form;
- An instruction by the client for a partial withdrawal of investment and the subsequent repayment of the investment in any form.

(e) *Brokers trading securities (including derivatives) on the JSE Securities Exchange*

- A trading instruction by a client to buy or sell securities or derivatives;
- An amendment or variation of a trading instruction from a client;
- The receipt from, or payment of money (including a dividend) to, a client in giving effect to a mandate.

(f) ***Brokers trading financial instruments on the Bond Exchange of South Africa***

- A trading instruction from a client to buy or sell a financial instrument;
- An amendment or variation of a trading instruction from a client;
- The receipt from or payment of money (including a coupon payment) to, a client in giving effect to a mandate.

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